

ARTICLE 14
INTERNAL AFFAIRS INVESTIGATIONS

EFFECTIVE JANUARY 2007

31140.1 Policy

Every allegation of employee misconduct within the California Department of Corrections and Rehabilitation (CDCR or Department) shall be promptly reported, objectively reviewed, and investigated when appropriate.

31140.2 Purpose

To ensure allegations of employee misconduct are addressed and investigations are conducted in a fair and consistent manner.

31140.3 Definitions

Allegation Inquiry - The collection of preliminary information concerning an allegation of employee misconduct necessary to evaluate whether a matter shall be referred to the Central Intake Unit.

Appointing Power - The Secretary of the Department.

Assistant General Counsel (AGC) – An individual responsible for managing the Employment Advocacy and Prosecution Team (EAPT) in the Department’s Office of Legal Affairs (OLA).

Assistant Secretary, Office of Internal Affairs (OIA) - An individual responsible for the operation and functions of the OIA.

Bureau of Independent Review (BIR) – A unit within the Office of the Inspector General (OIG) responsible for contemporaneous public oversight of the Department’s investigative and disciplinary processes.

Case Management System (CMS) – An electronic system that allows real-time documentation on investigative case activity and allows various participants within the employee disciplinary process to monitor cases and record key decisions and due dates. The CMS tracks all investigative requests, case acceptance and rejections, and case activity on all Internal Affairs investigations, as well as direct adverse actions that impose penalties without an investigation.

Central Intake Panel (CIP) – A collection of stakeholders led by the OIA that ensures all referred allegations of employee misconduct are evaluated consistently and assigned appropriately throughout the Department. Individuals who participate regularly in the CIP include but are not limited to the following: Assistant Secretary, OIA, or designee; Chief Assistant Inspector General (CAIG), BIR, or designee; AGC, EAPT, or designee; assigned Special Agents; and other pertinent Department representatives. The Assistant Secretary, OIA, has the authority to initiate Internal Affairs investigations and is ultimately responsible for the acceptance and rejection of all cases that come before the CIP.

Central Intake Unit (CIU) – A team of Special Agents, supervisors, and support staff within the OIA responsible for receiving, screening, and analyzing allegation inquiries for presentation to the CIP.

Chief Assistant Inspector General (CAIG) – An individual responsible for the operation and functions of the BIR, OIG.

Deputy Inspector General – An investigator employed by the OIG.

Designated Cases - Those cases assigned to the Vertical Advocates, including matters involving staff integrity and/or dishonesty, abuse of authority, sexual misconduct, use of force in which an inmate suffers death or serious injury, use of deadly force, serious allegations made against supervisors, and high profile or dismissal cases assigned to the Vertical Advocate by the AGC.

Employee Relations Officer (ERO)/Disciplinary Officer – An employee designated by the Hiring Authority to coordinate adverse actions.

Employment Advocacy and Prosecution Team (EAPT) - The team in the Department's OIA responsible for operation of the Vertical Advocacy Program.

Hiring Authority – The Undersecretary, General Counsel, Chief Information Officer, or any Assistant Secretary, Executive Officer, Chief Deputy Secretary, Director, Deputy Director, Associate Director, Warden, Parole Administrator, Superintendent, Superintendent of Education, Assistant Superintendent of Education, Health Care Manager, Regional Health Care Administrator, or any other person authorized by the appointing power to hire, discipline, and dismiss staff under his/her signature authority. The Administrator at the Richard A. McGee Correctional Training Center shall serve as the Hiring Authority for Correctional Officer Cadets. The appointing power includes a Hiring Authority for purposes of this Article.

Investigation - The collection of evidence that supports or refutes an allegation of misconduct, including criminal investigations, administrative investigations, retaliation investigations, or allegation inquiries.

Locally Designated Investigator(s) - A local investigator or a team of local investigators who meet the requirements to conduct Internal Affairs investigations and who perform allegation inquiries and conduct local Internal Affairs investigations as delegated and assigned by OIA regional offices.

Office of Civil Rights (OCR) – The entity with authority to investigate complaints related to Equal Employment Opportunity (EEO) issues.

Office of Internal Affairs - The entity with authority to investigate allegations of employee misconduct.

Senior and Special Assistant Inspectors General (SAIG) – Attorneys employed by the BIR who report to the CAIG.

Vertical Advocacy Model – A system that ensures legal representation for the Department during the investigative and employee disciplinary process in order to hold staff accountable for misconduct by way of thorough and complete internal investigations, principled decision-making, assessment of the investigations, and consistent and appropriate discipline.

Vertical Advocate – An EAPT attorney assigned to one or more specific Hiring Authority locations to consult with investigators and Hiring Authorities concerning investigative findings, disciplinary decisions, and to prosecute designated cases.

31140.4 Responsibility

31140.4.1 Appointing Power

The appointing power shall ensure compliance with the Department's Internal Affairs investigatory policy and procedures.

31140.4.2 Chief Deputy Secretary

Each Chief Deputy Secretary shall be responsible for ensuring compliance with the Department's Internal Affairs investigatory policy and procedures within his/her respective area.

31140.4.3 Office of Internal Affairs

The OIA is responsible for determining which allegations of staff misconduct warrant an Internal Affairs investigation and for completing all investigations in a timely and thorough manner.

31140.4.4 Assistant Secretary, OIA

The Assistant Secretary shall be responsible for the following:

- Overseeing the Department's investigative program and ensuring systemwide implementation of the Internal Affairs investigatory policy and procedures;
- Establishing guidelines, priorities, training, and management systems to ensure an efficient and effective Internal Affairs operation;
- Participating in the development, implementation, and evaluation of strategic and operational plans;
- Coordinating with the CAIG, or designee, for cases monitored by the BIR and the AGC, EAPT, for designated cases;
- Coordinating with and informing the appropriate Chief Deputy Secretary, the Undersecretary, and the Secretary regarding high-profile investigations being monitored by the BIR.

31140.4.5 Chief, OIA

Each Chief shall be responsible for the following:

- Overseeing the Department's Internal Affairs investigative program and ensuring systemwide application of the Internal Affairs investigatory policy and procedures;
- Participating in the strategic and operational plans;

- Coordinating with the CAIG or designee on cases monitored by the BIR and the AGC or designee for designated cases;
- Elevating cases to the Assistant Secretary, OIA, as necessary.

31140.4.6 Special Agent-In-Charge (SAC)

Each Special Agent-In-Charge shall be responsible for the following:

- Overseeing operations of the OIA Headquarters or regional office as well as the local Internal Affairs investigations in the respective region;
- Cooperating with and providing continual real-time consultation among OIA, the Vertical Advocate for designated cases, and the BIR for cases the BIR is monitoring;
- Ensuring OIA staff assigned to conduct investigations are properly trained and qualified;
- Monitoring all cases under his/her control to ensure cases are being investigated in a timely manner;
- Serving as a liaison between the OIA and Hiring Authorities regarding personnel investigations.

31140.4.7 Senior Special Agent

Each Senior Special Agent shall be responsible for the following:

- Assigning and supervising Internal Affairs investigations conducted by Special Agents or locally designated investigators;
- Cooperating with and providing continual real-time consultation among OIA, the Vertical Advocate for designated cases, and the BIR for cases the BIR is monitoring.

31140.4.8 Special Agent

Special Agents shall be responsible for the following:

- Conducting investigations in a manner that provides a complete and thorough presentation of all facts regarding the allegation or complaint;
- Cooperating with and providing continual real-time consultation with OIA, the Vertical Advocate for designated cases, and the BIR for cases the BIR is monitoring;
- Providing the Hiring Authority with consultation on investigative reports and providing a complete recitation of the facts, while refraining from conjecture or opinion;
- Updating case activity in the CMS.

31140.4.9 Central Intake Unit

The CIU, consisting of OIA personnel, shall ensure all referred acts of employee misconduct are analyzed and presented to the CIP, and the CIP shall ensure that all referred acts of misconduct are evaluated consistently and assigned appropriately throughout the Department.

31140.4.10 Hiring Authority

Each Hiring Authority shall be responsible for the following:

- Ensuring each allegation of employee misconduct is logged (regardless of whether the allegation is referred for investigation), receives prompt attention, and is addressed appropriately;
- Requesting investigations and direct adverse action by completing and forwarding to OIA CDC Forms 989, Confidential Request for Internal Affairs Investigation/Notification of Direct Adverse Action;

- Reviewing investigative reports, determining investigative findings, and making determinations of appropriate discipline;
- Notifying each subject in writing following the Hiring Authority's determination of investigative findings. Refer to DOM Chapter 3, Article 22, Section 33030.13.2, "Investigative Closure Memorandum" for direction regarding notification to the subject of an investigation;
- Notifying each complainant, including citizen, inmate or employee complainants, in writing, of the finding on the original complaint within thirty (30) days of the determination of the disposition of the investigation regarding the original complaint. The Hiring Authority shall not notify the complainant of specific investigative findings but shall make a separate finding on the original complaint. At no time should the specifics related to any personnel action be discussed with the complainant in the matter. The notification of the finding on the complaint shall be limited to whether the original complaint is sustained, not sustained, exonerated, or unfounded;
- Coordinating and consulting with the Vertical Advocate for designated cases and the SAIG for cases monitored by the BIR before making investigative findings or disciplinary determinations and prior to approving any settlement agreements.

31140.4.11 Supervisors and Managers

Each supervisor and manager shall be responsible for referring alleged misconduct and requests for investigation or adverse action to the Hiring Authority immediately following discovery of facts which may constitute misconduct.

31140.4.12 Locally Designated Investigators

Locally designated investigators shall be responsible for the following:

- Conducting investigations, as assigned by OIA regional offices, in a manner that provides a complete and thorough presentation of all facts regarding the allegation or complaint;
- Maintaining integrity and the confidentiality of the investigative process, unless prior approval to discuss a case with the Hiring Authority is obtained through the SAC;
- Cooperating with and providing continual real-time consultation among OIA, the Vertical Advocate for designated cases, and the BIR for cases the BIR is monitoring;
- Identifying issues related to allegations of employee misconduct and assisting the Hiring Authority, Vertical Advocate for designated cases, and the SAIG for cases monitored by the BIR;
- Updating case activity in CMS.

31140.4.13 Vertical Advocate

The Vertical Advocate shall be responsible for the following:

- Coordinating with the assigned investigator for designated cases for the duration of an investigation and evaluating completed investigations for legal sufficiency to prosecute an administrative action;
- Monitoring and coordinating with the ERO/Disciplinary Officer the adverse action process for all designated cases, from the onset of an investigation, including calculation of statute of limitations expiration dates;

- Providing legal consultation for all designated cases to the assigned investigator, including developing the investigative plan, assisting with preparation of investigative interviews, and attending investigative interviews, as appropriate, to assess witness demeanor and credibility;
- Providing legal consultation to the Hiring Authority on all designated cases and coordinating with the SAIG for cases monitored by the BIR.

31140.4.14 Office of Civil Rights

The OCR may initiate investigations when an employee files a complaint with the OCR regarding discrimination, harassment, or EEO related retaliation. Following completion of OCR's evaluation, and if the OCR determines that an OIA investigation may be necessary, the OCR shall forward a copy of the intake document and all related information to the OIA for investigation consideration.

31140.5 Employee Expectations & Reporting

Each employee, regardless of classification or rank, shall adhere to the Department's Employee Performance Standards as defined in DOM, Section 3, Article 22, Subsection 33030.3. Each employee shall report misconduct or any unethical or illegal activity in a timely manner. Failure to report employee misconduct or any unethical or illegal activity in an investigation or allegation inquiry shall be grounds for corrective action, disciplinary action, or both. Employees shall not make false statements when questioned, interviewed, or in reports submitted.

31140.5.1 Employee Duty to Cooperate

Each employee of the CDCR is required to comply and cooperate as follows:

- If requested to make a statement in any official internal investigation conducted by the Department, employees shall make full, complete, and truthful statements. Failure or refusal to make statements or making false statements during Department Internal Affairs investigations may result in disciplinary action.
- Employees shall not take any action which would interfere with, delay, distort or unduly influence any official investigation conducted by the Department or any other government agency. Any employee who knowingly gives false evidence, withholds evidence, or interferes in any way during such an investigation, or requests or encourages another to do so, may be subject to disciplinary action.
- Employees have a duty to cooperate with investigators of the Department and with officials from other law enforcement agencies who are conducting a criminal investigation. Employees shall make full, complete, and truthful statements. Failure to cooperate may result in disciplinary action.

31140.6 Authority to Conduct Investigations

Pursuant to Government Code Section 11182, the Secretary of the Department delegates the authority to initiate and conduct investigations to the Assistant Secretary, OIA.

31140.7 Requirements for Hiring Internal Affairs Investigators

Investigators shall be hired in accordance with Penal Code Sections 6065 (b)(1) and 6126.1(c).

31140.8 Required Training

All Internal Affairs investigators shall complete investigation training and be certified as mandated by Penal Code Section 6126.1 and the OIA Investigation Training Requirements. In addition, Internal Affairs investigators shall complete advanced investigative training as outlined in the OIA Investigation Training Requirements.

31140.9 Filing an Allegation of Employee Misconduct with a Hiring Authority

Information regarding alleged employee misconduct shall be reported promptly by staff to a supervisor or other appropriate departmental, governmental, or law enforcement entity. If information is reported verbally to a supervisor, the staff person shall also submit a written report to the supervisor. The supervisor shall prepare a separate written report regarding the allegation(s) and shall submit his/her report and the staff person's report to the Hiring Authority or to the Hiring Authority's supervisor if the allegation(s) are against the Hiring Authority. Such reports shall include all pertinent information concerning the allegation(s), the timeline, and the source(s) of the information.

Any allegation of misconduct which is believed by staff to constitute an emergency shall be reported immediately to a supervisor, locally designated investigators, or the OIA. In the event of such an emergency, staff shall follow-up with the written report within one (1) day of learning of the information. Some instances that constitute an emergency are as follows:

- Possible loss of life or serious bodily injury;
- Serious breach of facility security;
- Further aggravation of a potentially dangerous situation;
- Activities which seriously compromise or jeopardize an investigation;
- An illegal activity which may occur imminently.

31140.10 Reporting Misconduct and Protecting Employees from Retaliation

To encourage and protect employees that confront and report serious misconduct, the Department has strengthened its policies and procedures to provide additional protections beyond those included in the California Whistleblower Protection Act (Government Code section 8547 et seq.) and other California protective statutes. This reporting of misconduct process and the protection offered by the Department are detailed in the Department's "Policy and Procedure for Reporting Serious Misconduct and Protecting Employees from Retaliation." The procedures may be obtained by contacting the OIA.

31140.11 Inmate, Ward, or Parolee Complaints Against Staff

All inmate, ward, or parolee complaints against staff shall be processed in accordance with DOM, Section 54100.

31140.12 Complaints by Members of the Public Against Department Employees

Pursuant to Penal Code Section 832.5, it is the policy of the Department, as an employer of peace officers, to have a procedure for investigating a complaint by a member of the public against its peace officers.

Any person, other than an inmate, ward, parolee, or departmental employee, who wishes to file a complaint of misconduct by a departmental peace officer as defined in the California Code of Regulations (CCR), Title 15, Section 3291(b), shall be advised to submit a complaint. Complaints of misconduct will normally be recorded on a CDCR Form 2142, Citizen's Complaint Against Employee of the California Department of Corrections.

A complaint may be made at any time, day or night, to any on-duty departmental supervisor. The complainant may also choose to mail or deliver his/her complaint directly to the Hiring Authority or any Department Head. Whenever possible, the complainant shall be requested to personally meet with or talk to the Hiring Authority or designee at the time of the original complaint.

Upon initial receipt of a complaint by a member of the public, the supervisor accepting the complaint shall confirm the complaint involves a Department employee(s). Complaints determined to involve personnel from other agencies shall be forwarded to the appropriate authority through the appropriate chain of command. The supervisor accepting the complaint shall prepare a Citizen's Complaint Receipt Acknowledgment and forward it to the complainant within five (5) working days.

Upon receipt of a written complaint or CDCR Form 2142 from a member of the public, the departmental supervisor accepting the complaint shall forward the complaint to the Hiring Authority for review. The Hiring Authority shall evaluate the complaint and determine whether the issue is supervisory in nature, if a CDC Form 989 is required, or if a written response to the member of the public will suffice. If the complaint is regarding sexual harassment or discrimination based on race, gender, national origin, religion, sexual orientation, or disability, the complaint shall be referred to the OCR for investigation and appropriate disposition.

Complaints and reports and findings relating to the complaints made by members of the public shall be retained for a period of at least five (5) years pursuant to Penal Code Section 832.5 (b).

31140.13 Logging Allegations of Employee Misconduct

The Hiring Authority, or designee, shall log each allegation of employee misconduct, regardless of whether the allegation is referred for investigation, on the CDCR Form 2140, Internal Affairs Allegation Log. The log shall be incident-driven; therefore, more than one employee can be listed under one log entry. Log numbers shall be assigned using a standard logging system, utilizing the following format: **ABC-001-06**.

- The first identifier "ABC" indicates the institution (i.e. CMF), field office, or other work site by the acronym.
- The second identifier "001" indicates the sequential number. The sequence continues throughout the year.
- The third identifier indicates the calendar year in which the allegation of misconduct was initiated for action.

To ensure departmentwide standardization and compliance with departmental audit tools, the CDCR Form 2140 shall be utilized by each Hiring Authority for tracking.

31140.14 Allegation Inquiry

Allegation inquiries shall be conducted at the direction of the Hiring Authority when there is an allegation of misconduct, which if true could lead to adverse action, and the subject(s), allegation(s), or both are not clearly defined or more information is necessary to determine if misconduct may have occurred. Each allegation inquiry shall be promptly performed by locally designated investigators approved by the OIA or OIA investigators. A written allegation inquiry report shall be provided to the Hiring Authority and shall document the collection of preliminary information that supports or refutes alleged misconduct. All applicable sections of Memoranda of Understanding (MOU) related to personnel investigations shall be followed.

The Hiring Authority, or designee, shall indicate on the CDCR Form 2140, in the designated area, if an allegation inquiry is being conducted and the resulting action from the allegation inquiry (e.g., referred to CIU for investigation, processed as a CDC Form 602, Inmate/Parolee Appeal Form, or found to not have merit).

If, during the course of the allegation inquiry, sufficient information is obtained to warrant an Internal Affairs investigation, the locally designated investigators approved by the OIA or the OIA investigator shall notify the Hiring Authority. The Hiring Authority shall forward a CDC Form 989 to the OIA CIU requesting an Internal Affairs investigation. If the allegation inquiry reveals sufficient evidence for the Hiring Authority to impose direct adverse action, the Hiring Authority shall forward a CDC Form 989 to the OIA CIU requesting to impose direct adverse action.

31140.15 Requests for Internal Affairs Investigation

The CDC Form 989 and the corresponding Documents and Materials checklist shall be promptly completed and forwarded to the OIA CIU, by the Hiring Authority for processing as soon as is reasonably practical. The Hiring Authority shall complete the CDC Form 989 and shall submit copies of all documents and materials pertinent to the request. Original documents and evidence shall be maintained by the requesting Hiring Authority unless otherwise agreed to and ordered by the SAC.

The Hiring Authority or designee shall note the complainants name and contact information, the supervisor/manager who discovered the misconduct, and the discovery date as follows:

- Complainant: Individual (inmate, ward, parolee, citizen, staff, or other) who brought the misconduct allegation to the attention of CDCR staff.
- Discovery: Date that an uninvolved manager or supervisor observed, was advised of, or otherwise discovered the misconduct.

The Hiring Authority or designee shall note any special information on the CDC Form 989 such as the employee being placed on administrative time off, temporarily reassigned pending the investigation, issued a firearm restriction, or other pertinent information. The CDC Form 989 with supporting documentation shall be forwarded to the OIA CIU by special mail processing (express/receipts) or personal delivery. The transmittal envelope shall be sealed and clearly marked "CONFIDENTIAL" with appropriate return address information.

A limited exception to the Central Intake requirements exists for urgent matters involving potential employee misconduct requiring immediate investigative action. If immediate investigative action is believed to be necessary, the Hiring Authority shall request assistance from the OIA Regional Office. If OIA is unable to respond, the Hiring Authority may take independent action but is required to report such action to the OIA Regional Office no later than the next business day.

31140.16 Review, Evaluation, and Disposition

The CIU shall review each CDC Form 989 and all supporting documentation and shall evaluate and make a determination regarding each matter within thirty (30) calendar days.

Requests for investigation shall receive a case number and be evaluated using a priority approach. Outcomes of the evaluation are as follows:

1. Accepted for Investigation

Allegations of misconduct accepted by the CIU for investigation shall be forwarded to one of the OIA regional offices for assignment. Once received, the OIA regional will assign the investigation as follows:

- Assign the investigation to a Special Agent from the OIA regional office within ten (10) calendar days;
- Assign the investigation to a locally designated investigator within ten (10) calendar days. The investigation shall be supervised and monitored by a Senior Special Agent from the respective OIA Regional Office.

The SAC, CIU, shall provide written acceptance of the case by memorandum to the Hiring Authority. The memorandum shall include the OIA regional office with case responsibility and the CMS case number. This acceptance memorandum shall remain a permanent record in the Internal Affairs investigator's case file.

2. Referred for Investigation

These cases contain allegations that are more appropriately investigated by other entities (i.e., outside law enforcement, the OIG, or OCR).

3. Returned to the Hiring Authority Without Investigation

Investigation requests may be returned to the Hiring Authority for failing to provide all necessary information, for failing to meet the criteria for an Internal Affairs investigation, or when the CIU determines no investigation is warranted. These requests are returned to the Hiring Authority with a recommendation for the following:

- **Direct Discipline/Supervisory Action:**

If misconduct is sufficiently well-documented, the case may be referred back to the Hiring Authority for direct adverse action with consultation from an assigned Vertical Advocate for designated cases or in consultation with the Vertical Advocate for all other cases. If the Vertical Advocate or ERO/Disciplinary Officer determines that a subject interview or other interview(s) is necessary, the Vertical Advocate or ERO/Disciplinary Officer shall notify the CIU, and request an interview(s). Locally designated

investigators are not authorized to initiate investigations or conduct interviews without approval of OIA.

Some misconduct should be addressed by taking corrective action, such as training, policy or procedure change, or other progressive discipline measures.

- **Further Investigation or Inquiry Required:**

Some requests for investigation may require the Hiring Authority to provide additional information or investigation. When the CIU determines insufficient information or documentation was submitted with the CDC Form 989, CIU staff shall contact the Hiring Authority, or designee, and request additional information. The requested information and/or documentation shall be provided to the CIU within ten (10) calendar days, if the information is available.

- **No action:**

Some requests may not warrant any corrective or adverse action.

For requests returned without investigation, a memorandum shall be completed by the SAC and forwarded to the Hiring Authority. The memorandum shall include a detailed explanation for the action taken and shall direct the Hiring Authority, as appropriate, to determine the appropriate disciplinary action while taking into account any prior misconduct by the employee or corrective action imposed. A copy of the memorandum shall be retained in the CIU file. In addition to responding in writing, the SAC shall be available to the Hiring Authority to discuss the decision for the return of the investigation. The Hiring Authority may appeal the decision in writing to the Chief, OIA, Headquarters Operations, promptly following issuance of a returned case memorandum.

31140.17 Case Assignment

When a request for investigation is accepted, the case shall be assigned to an OIA regional office (Headquarters, Northern, Central, or Southern). If the case is assigned by the OIA region to a locally designated investigator, the case shall receive a case number and be supervised by a Senior Special Agent from the OIA regional office. The locally designated investigator shall complete the case and return it to the Senior Special Agent for final review before it is noted as complete in the CMS.

31140.18 Logging Allegations

In accordance with Penal Code Section 6065(b)(2), all Internal Affairs allegations or complaints, whether investigated or not, shall be logged into CMS and numbered sequentially on an annual basis. The log shall specify, but not be limited to, the following information: the sequential number of the allegation or complaint, the date of receipt of the allegation or complaint, the location or facility to which the allegation or complaint pertains, and the disposition of all actions taken, including any final action taken. The log shall be made available to the Inspector General.

31140.19 Case Management System

The OIA Information Technology personnel shall maintain, control, and secure an electronic CMS for purposes of security and efficiency and to allow real-time documentation of case activity by investigators, Vertical Advocates, and ERO/Disciplinary Officers. In addition to

capturing information during the course of an investigation, the CMS will capture post-investigation information, such as case findings, disciplinary action, and legal action.

Users include OIA Central Intake staff; OIA staff, Vertical Advocates, BIR, Hiring Authorities, ERO/Disciplinary Officers, and designated local Internal Affairs investigators. The OIA may, at its discretion, grant CMS access to other Department staff having significant roles in the employee disciplinary process. For purposes of security and investigative integrity, the OIA shall also have the sole authority to grant or remove access to the CMS for any CDCR employee.

The OIA shall create and maintain a user manual for the CMS that shall provide detailed operating procedures for OIA employees and other authorized CMS users.

- **New Cases**

As investigative requests are evaluated by the CIU, the request/case shall be opened in CMS and key information, such as allegation, case type, and initial case decisions shall be recorded in CMS. If an investigation is opened, case assignment information shall be entered in CMS.

- **Ongoing Cases**

Investigators and authorized users shall use CMS to record case activity, monitor case progress, and provide a real-time record of decisions. Other authorized users may use CMS to monitor case activity or record pertinent actions, activities, and decisions.

- **Closing Cases**

Investigators, Vertical Advocates, and Hiring Authorities shall refer to and comply with DOM, Section 3, Article 22 regarding investigative review and case closure.

31140.20 Criminal Investigations

A criminal investigation should be conducted for an allegation of employee misconduct when there is reason to believe the employee has committed a violation of criminal law and an outside law enforcement agency is not conducting an investigation. The CIU shall identify and document the potential criminal violation and the facts and evidence represented in support of the complaint. The CIU shall refer the case to a SAC for the respective region who will assign the criminal investigation to a Senior Special Agent for supervision.

Upon case initiation, the Senior Special Agent or the Special Agent shall confer with the Vertical Advocate, for designated cases, and the SAIG for cases monitored by the BIR. Upon completion of the investigation, if probable cause exists to believe that a crime has been committed, the investigation shall be referred to the appropriate agency for prosecution.

Criminal investigations shall be conducted in compliance with all laws, regulations, and departmental policies.

31140.21 Administrative Investigations

An administrative investigation shall be conducted into allegations of staff misconduct that are violations of policy, procedure, or law. Administrative investigations may be conducted concurrently or subsequent to a criminal investigation. The determination of whether to conduct the administrative investigation concurrently with the criminal investigation shall be made by the Senior Special Agent in consultation with the Vertical Advocate and BIR in conjunction with the prosecuting agency. In addition, the prosecuting agency shall be consulted prior to any compelled subject interview when criminal charges or court proceedings are pending. If the prosecuting agency requests the Internal Affairs investigation be delayed pending criminal prosecution, that request shall be documented in the case file and in CMS. An administrative investigation, adverse action, or both, shall not be delayed unless it clearly would jeopardize the criminal prosecution.

In an administrative investigation, an employee does not have a right to refuse to answer questions likely to lead to the discovery of relevant evidence as determined by the investigating entity. When the employee is compelled to answer these questions, the answers cannot be used against the employee in a criminal or state court civil proceeding subject to certain exceptions. In an administrative investigation of a peace officer involving possible criminal conduct, the peace officer shall be advised of his/her constitutional rights before questioning, followed by the "Lybarger warning" if he/she refuses to answer the questions on the grounds the answer may be self-incriminating. [Refer to Government Code Section 3303 (f) and (h).]

31140.22 Retaliation Investigations

OIA is responsible for investigating retaliation as defined under the California Whistleblower Protection Act and other California retaliation protective statutes, except for retaliation associated with EEO complaints and processes which fall under the responsibility of the OCR. EEO related retaliation complaints that are received by OIA shall normally be forwarded to OCR for review and consideration.

Upon receipt, the OIA CIU shall conduct a review and analysis of all non-EEO related retaliation complaints. Each complaint shall be evaluated on its merits to determine if a prima facie case of retaliation can be established.

In order for a complaint or referral for investigation to establish a prima facie case of retaliation and be accepted by OIA, the following must be established:

- That an employee directly or indirectly used or attempted to use official authority or influence for the purposes of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command for the purpose of interfering with the reporting of an improper governmental activity or making a protected disclosure; **or**
- That the employee: a) made a disclosure to a manager or supervisor of what is believed to be an improper governmental activity; b) was or is cooperating in an investigation of improper governmental activity; or c) refused to obey an illegal order or directive; **and**
- The alleged retaliator was aware of the protected activity, protected disclosures, or failure to obey an illegal order; **and**

- The employee subsequently suffered reprisal, retaliation, threats, coercion, intimidation, or similar acts; **and**
- There was a causal connection between the protected disclosure, protected activity, or refusal to obey an illegal order and the adverse acts.

31140.23 Workers Compensation Fraud Investigations

The OIA is responsible for investigating Workers' Compensation fraud. Penal Code Section 550 and Insurance Code Section 1871.4 define the law relating to Workers' Compensation insurance fraud.

It is a felony to present a false or fraudulent claim to receive Workers' Compensation benefits. Fraud can occur at any time during the life of a Workers' Compensation claim; from the initial filing of the claim, to false statements to the employer, doctor, medical care personnel, physical therapist, claim representative, or anyone else involved in the administration of the claim and the determination of available benefits. Fraud can occur even if the initial injury was legitimate and the filing of the claim was warranted if the employee later makes a material false statement or misrepresentation.

31140.24 Deadly Force Investigations

The OIA investigates all reported use of deadly force incidents resulting in injury and all reported uses of nondeadly force resulting in death or fatal injury. These deadly force incidents do not generally include inmate assault/battery on staff or warning shots in an institution/facility setting. The OIA shall deploy separate Deadly Force Investigation Teams (DFIT) to conduct criminal and administrative investigations as soon as is reasonably practical after receiving a report of such an incident.

- **DFIT–Criminal Team**

The DFIT-Criminal Team conducts deadly force criminal investigations either independently or in conjunction with appropriate local law enforcement agencies or district attorney's office. In some cases and locations, the criminal investigation will be conducted by the local law enforcement agency in accordance with MOU's between the Department and the local law enforcement agency. In these cases, the DFIT–Criminal Team will monitor the progress of local law enforcement and assist when appropriate.

- **DFIT–Administrative Team**

The DFIT-Administrative Team conducts deadly force administrative investigations as required to determine whether the use of force complied with department policies and procedures and to identify any need for policy, procedure, training and/or equipment modifications. The DFIT–Administrative Team refers and presents the completed investigation to the Deadly Force Review Board for disposition.

The OIA shall also refer to CCR Section 3268.1 for additional guidance and requirements governing deadly force investigations.

31140.25 Employee Representation Rights

Employees are entitled to representation during investigative interviews consistent with MOU's, Public Safety Officers Procedural Bill of Rights Act, and other state and federal laws. A personal advisor, attorney, or another state employee designated by the subject or witness may attend any interview that may lead to adverse action. Employees who are possible subjects or witnesses in the investigation are excluded as employee representatives.

31140.26 Temporary Authorization (TAU) Appointments

Employees with a temporary authorization (TAU) appointment status are not entitled to have a representative present during an interview which is preparatory to a separation from the TAU appointment. However, if a proposed action against an employee in this status is attributable to a specific incident that would have resulted in an adverse action, investigatory interviews shall be handled like adverse action cases and employee representation shall be allowed as prescribed by law.

31140.27 State Time

Use of State time for investigative matters shall be approved by the employee's supervisor. Absent an emergency, employees may request and shall be allowed reasonable State time by the supervisor to contact/secure a representative and to discuss the matter prior to any meeting/interview that may lead to adverse action. The employee shall also be allowed reasonable State time to prepare for the interview/meeting with the representative.

31140.28 Statute of Limitations

Government Code Section 3304(d) and (g) for public safety officers and Government Code Section 19635 for nonpublic safety employees shall be adhered to regarding statute of limitations for administrative investigations.

31140.29 Memoranda of Understanding

In addition to complying with the provisions of law and regulation, OIA staff shall also adhere to conditions detailed in the various bargaining unit MOU's. All investigators shall be familiar with the employee investigation requirements of these agreements and their application to the investigation process.

31140.30 Investigator's Field Guide

Internal Affairs investigations shall be conducted with due diligence and completed in a timely manner in accordance with the law, applicable MOU's, and the OIA's Investigator's Field Guide.

31140.31 Subject Interviews

All departmental employees under investigation and subject to interview by an investigator shall be informed of the following before such interview: (1) name and classification of the investigator; (2) name and classification of all other persons to be present during the interview; and (3) the nature of the investigation in sufficient detail to allow the employee to respond to the allegations.

31140.32 Witness Interviews

If during a witness interview, facts are discovered that indicate the witness may have committed misconduct, the OIA investigator shall immediately discontinue the interview, even if the facts/admissions are not related to the incident being investigated. The OIA investigator shall reschedule the interview applying all employee procedural safeguards related to a subject of investigation/inquiry.

31140.33 Recording Interviews During an Investigation

During OIA investigations, all noticed employee interviews concerning matters that could lead to an adverse action shall be audiotape-recorded.

Any audiotape recording of a noticed investigatory interview shall be as follows:

1. Made openly and with the full knowledge of the employee being interviewed;
2. Completely documented as part of the final report; and
3. Retained for later transcription, if needed.

An employee being interviewed as the subject of an investigation may audiotape-record any portion of the interview and have access to the Department's audiotape recordings if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. If a subject audiotape-records the interview, he/she may retain possession of his/her audiotape upon the conclusion of the interview.

An employee being interviewed as a witness of an investigation may audiotape-record the interview but may not retain the original or a copy of the audiotape recording. Digital recorders shall not be allowed in witness interviews, unless the employee agrees to relinquish possession of the recorder at the end of the interview. The employee shall have access to the audiotape recordings made by the Department and the employee before any subsequent interview.

All audiotape recordings shall be retained with the original investigative/inquiry report. Audio recordings are part of the investigative/inquiry report and are confidential.

This section does not apply to surreptitious recordings conducted during a criminal investigation.

31140.34 Criminal Investigations - Witness Assertion of Fifth Amendment Privilege Against Self-Incrimination

A witness in a criminal investigation has the right to assert his/her Fifth Amendment privilege against self-incrimination when: (1) he/she has reasonable grounds to believe that his/her testimony may be used against him/her in the criminal matter under investigation or in a future criminal proceeding; or (2) that his/her testimony might uncover other evidence against him/her in a criminal matter.

Witnesses cannot assert the Fifth Amendment privilege against self-incrimination solely to protect others from possible criminal prosecution or solely to avoid providing information to investigators.

31140.35 Administrative Immunity from Disciplinary Action

Requests to confer administrative immunity during an investigation must be processed in accordance with the CDCR's Policy on Immunity during Internal Affairs Investigations. The policy may be obtained by contacting the OIA.

31140.36 Criminal Misconduct Discovered During an Investigation/Inquiry

If an investigation or allegation inquiry reveals a possible violation of criminal law, the OIA investigator shall present the facts of the case to the Regional SAC.

- The SAC shall coordinate with the CIU so that the additional allegation can be presented to the CIP. If urgent circumstances exist that require immediate investigative response, the SAC should initiate such action and advise the CIU subsequently.
- If approved by the CIP, a criminal investigation by OIA shall be conducted, and the case presented to the local prosecuting agency for possible prosecution if there is probable cause to believe a crime has been committed.
- When criminal prosecution is possible, the designated Special Agent should consult with the prosecuting authorities before interviewing the involved employees.
- If, in a criminal case, the prosecuting agency declines to prosecute, this fact and the reason for the decision not to prosecute shall be documented in the CMS by the assigned investigator.

31140.37 Administrative Misconduct Discovered During an Investigation/Inquiry

If an investigation/inquiry of alleged employee misconduct reveals possible additional misconduct, the OIA investigator shall present the facts of the case to the SAC. The SAC shall promptly notify the Hiring Authority and consult with the Vertical Advocate to determine if the additional allegations should be included with the existing investigation/inquiry or presented to the CIP. After consultation with the SAC, additional allegations shall be added if appropriate and the investigation of the additional allegations shall be conducted by OIA.

31140.38 Confidentiality of Investigations

All investigative records of the OIA are confidential. OIA investigators, locally designated investigators, OIA support staff and others involved in an investigation/inquiry shall not discuss with others, except Department legal counsel and the OIG, any aspect of any investigation/inquiry record without approval of OIA.

All other Department staff not mentioned above involved in an investigation/inquiry, including witnesses and administrators, shall not discuss any aspect of any investigation without approval of OIA excepting discussions with their employee representative and legal counsel.

31140.39 Correspondence Relating to Any Internal Affairs Investigation

All correspondence related to any Internal Affairs investigation shall be clearly marked "CONFIDENTIAL." Correspondence includes, but is not limited to, reports, evidence, recordings, photographs, documents, or investigative material concerning any Internal Affairs investigation. When sending correspondence through the United States Postal Service, departmental mail, United Parcel Service, or other courier service, such material shall be sealed in a manner designed to prevent or reduce unauthorized access.

31140.40 Investigative Report

All reports shall be submitted in the standard format provided by the OIA beginning with a statement of the allegation or complaint, shall provide all relevant facts, and shall include the investigator's signature. The report shall address material contradictions but shall not include any conclusions regarding disposition of the investigation.

31140.41 Distribution of Investigations

Upon completion of each Internal Affairs investigation, the investigator shall forward the investigative report, all supporting documents, investigative notes, and case file documents to the SAC; the Vertical Advocate for designated cases; and the SAIG for cases monitored by the BIR. For designated cases and cases monitored by the BIR, the forwarding and distribution of copies shall be undertaken consistent with DOM, Section 3, Article 22. The investigator shall store his/her investigative report in CMS.

For all other cases, upon approval of the completed investigation, the Regional SAC shall forward a complete copy, including a copy of all exhibits, investigative notes, and case file documents to the Hiring Authority who requested the investigation. In the event that the requesting Hiring Authority became a witness or a subject of the completed investigation, the investigative report and supporting documentation shall be forwarded to the Hiring Authority's immediate supervisor.

Upon completion of any additional investigation that may be requested by the Hiring Authority, Vertical Advocate for designated cases, or the SAIG for cases monitored by the BIR, the Regional SAC should forward a letter to the subject of the investigation advising the subject that the investigation has been referred to the Hiring Authority. The Hiring Authority shall review the investigation package, determine the investigative findings, and initiate disciplinary action, if necessary, consistent with DOM, Section 3, Article 22.

A complete copy of the investigation and case file shall be maintained by the OIA.

31140.42 Maintenance of Investigation/Inquiry Records, Files, and Complaints

All reports, documents, evidence, and other materials or information relative to any investigation shall be processed and stored in a manner precluding unauthorized access or disclosure (refer to Penal Code Sections 832.7 and 832.8, and Evidence Code Sections 1043 and 1046).

The Hiring Authority shall ensure the proper maintenance and security of investigation/inquiry records and files pursuant to Penal Code Sections 832.5 and 832.7.

31140.43 Purging Investigation/Inquiry Records

Investigation records shall be purged and destroyed as provided in the Records Retention Schedule. Purging may be postponed if litigation or potential litigation is pending, or if there are other justifiable reasons. The OIA shall forward a request, by memorandum, regarding approval/disapproval to purge investigative records to the Hiring Authority of each employee investigation and to the OLA. The Hiring Authority and OLA shall review current litigation with appropriate staff before authorizing, in writing, the purging of these records.

31140.44 Revisions

The Assistant Secretary, OIA, or designee, shall be responsible for ensuring that the contents of this Article are kept current and accurate.

31140.45 References

GC §§ 3303(f) and (h), 3304(d) and (g), 8547, 11182, 19635.

PC §§ 550, 832.5, 832.5(b), 832.7 and 832.8, 6065(b)(1), 6065(b)(2), 6126.1, 6126.1(c).

EC §§ 1043 and 1046.

IC § 1871.4.

CCR (15) § 3268.1 and 3291(b).

Madrid v. Tilton, (USDC. No C90-3094 TEH) December 2006.

Fifth Amendment.

Public Safety Officers Procedural Bill of Rights Act.

California Whistleblower Protection Act.